

Under Rule 41(a)(1), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (citing Hamilton v. Shearson-Lehman American Express, 813 F.2d 1532, 1534 (9th Cir. 1987)). A plaintiff may dismiss his action so long as the plaintiff files a notice of dismissal prior to the defendant's service of an answer or motion for summary judgment. The dismissal is effective on filing and no court order is required. Id. The plaintiff may dismiss some or all of the defendants, or some or all of his claims, through a Rule 41(a)(1) notice. Id.; Pedrina v. Chun, 987 F.2d 608, 609-10 (9th Cir. 1993). The filing of a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice. Concha, 62 F.2d at 1506. Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff's right to commence another action for the same cause against the same defendants. Id. (citing McKenzie v. Davenport-Harris Funeral Home, 834 F.2d 930, 934-35 (9th Cir. 1987)). Such a dismissal

1 leaves the parties as though no action had been brought. Id.
2 Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997).

3 No answer to the petition and no motion for summary judgment has been filed in this
4 action. Because Petitioner has exercised his right to voluntarily dismiss this action under Rule
5 41(a)(1), this case is over. See Wilson, 111 F.3d at 692.
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7 Therefore, IT IS HEREBY ORDERED that:

- 8 1. Plaintiff's motion is GRANTED; and
9 2. The Clerk of the Court is DIRECTED to close this case in light of Plaintiff's Rule
10 41(a)(1) Voluntary Dismissal.
11

12 IT IS SO ORDERED.

13 **Dated: September 27, 2005**
14 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE